

REMARKS

The present response is filed with a Request for Continued Examination (RCE) and is to the Office Action mailed in the above referenced case on April 13, 2005. Claims 1-42 are presented below for examination. Claims 1-42 are rejected under new grounds according to 35 U.S.C. 102(e) as being anticipated by the newly presented reference of McLampy (U.S. 6,606,668), hereinafter McLampy.

Applicant has carefully studied the prior art presented by the Examiner, and the Examiner's rejections and statements of the instant Office Action. In response, applicant presents arguments to clearly establish that the present invention as embodied in the independent claims of the present invention is unarguably distinct from that of the prior art presented, and that not all of the limitations recited in the claims in their present form are explicitly taught in the prior art presented.

Applicant wishes to emphasize some of the key aspects of applicant's invention which appear to be misunderstood or overlooked by the Examiner in his rejections and remarks of the instant Office Action. Specifically, applicant emphasizes the language in each of the base claims 1, 16 and 27, which recites switching user access from a telephone number currently used to one of a table of telephone numbers based on priority characteristics of the telephone numbers, and ones of the stored table of telephone numbers. Additionally, applicant respectfully points out to the Examiner that it is the monetary cost to the user (node) using the telephone number that is a main factor in prioritizing alternate telephone numbers to which the user may be switched, and it is this data that is monitored and updated in real time, during a user dial-up Internet connection, so as to intelligently switch the access telephone numbers transparently to the user, or at least make notification to the user of the preferred alternate access telephone number so that the user may disconnect and reconnect to the new number.

The Examiner has stated that McLampy teaches applicant's system and methods for enabling priority-based Internet access telephone number switching...through monitoring current connection states of a user node connected to the network during

session and comparing those states with current states of known alternate access numbers available to the user node during the network session (col. 3, lines 35-49). Applicant respectfully disagrees for the following reasons.

Firstly, applicant points out that MeLampy does not specifically deal with switching Internet access telephone numbers at all; rather, MeLampy deals with monitoring and prioritizing telephony carriers, and maintaining and updating a table of carriers, prioritized according to cost, based on originating SSP, time of day, day of week or month, and so on. MeLampy teaches monitoring the cost of using a carrier, not the cost of using a specific Internet access telephone number, as in applicant's invention.

The rather common practice of Examiners in rejecting claims because prior art teaches alternative inventions that might accomplish the same or similar purposes does not provide prima facie rejections, and should be discouraged. To create a *prima facie* rejection, the actual elements of the claimed invention must be shown in the art, and applicant strongly believes that this is not the case in the prior art presented by the Examiner.

Applicant's invention teaches and claims switching telephone numbers, and monitoring telephone numbers as well as bandwidth, not circuit availability and carrier costs, as in MeLampy. Applicant's invention is directed toward solving the problem with Internet dial-up users of not always being connected to the most economical Internet dial-up access telephone number possible at any given time during an Internet session. The largest body of users that routinely access the Internet do so using a dial-up/modem method accessing Internet dial-up telephone numbers

In some cases, telephony limitations in capacities of local switches in the local telephone network may contribute to the problem of attempting to connect to a local ISP. This may be the case if there are a large number of individuals continually re-trying busy ISP numbers. This effect acts as a virtual pool or queue of callers with only one successfully connecting when one connected user drops off and a modem becomes available.

An alternative to waiting for a local ISP access number to become available is to use a back-up number to another ISP location. Often, these numbers are long distance

numbers. A common situation that occurs for many users operating in medium to small municipalities, or from rural areas, is that the local numbers are very often busy while back-up long distance numbers offer more assured access probability. This is especially true when the back-up number is to an ISP located in a more metropolitan area having better infrastructure.

Many Internet service providers are local only to a particular community and do not have access telephone numbers available for other ISP access locations. However, most large providers offer many numbers that connect to a plurality of regional ISP locations. A user forced to use a long distance backup number will generally limit his or her Internet activity because of the incurred charges for long distance access. To solve this problem, applicant's invention provides a method and apparatus that enables automated transfer of a WAN-connected client from a low priority access telephone number to a higher priority access number while the client is still in session, enabling a user to start an Internet session using a low priority number (backup) and be reasonably assured that he or she will soon be switched to a higher priority number.

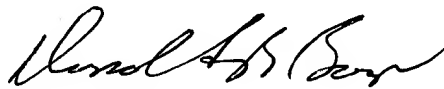
Upon thorough review of MeLampy, it is clear to applicant that the reference explicitly teaches nothing to do with switching the data connection between a user node and network level nodes, by switching the Internet telephone access numbers used in obtaining the data connection, from one access number having a first priority assigned based on monitored call and connection characteristics, to another access number having a second priority assigned. The reference, in fact, nowhere mentions or suggests anything having to do with switching data connections on behalf of the user by switching Internet access telephone numbers used in said data connections, or application software comprising a list of current and alternate Internet access telephone numbers from which to establish alternate data connections during a data session, each access number having a specific priority assigned, based on characteristics of the access telephone number, such as toll cost, etc., or other characteristics of the data connection using the Internet access telephone number for dial-up Internet access.

For these reasons, as outlined above, applicant argues that independent claims 1, 16 and 27 are clearly and unarguably patentable over the primary reference of MeLampy.

Depending claims 2-15, 17-26 and 28-42 are then patentable on their own merits, or at least as depended from a patentable claim.

As all of the claims standing for examination have been shown to be patentable over the art of record, applicant respectfully requests reconsideration and that the present case be passed quickly to issue. If there are any time extensions due beyond any extension requested and paid with this amendment, such extensions are hereby requested. If there are any fees due beyond any fees paid with the present amendment, such fees are authorized to be deducted from deposit account 50-0534.

Respectfully Submitted,
Donald R. M. Boys

by 
Donald R. Boys
Reg. No. 35,074

Central Coast Patent Agency
P.O. Box 187
Aromas, CA 95004
(831) 726-1457